



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0334; FRL- 9984-36-Region 4]

**Air Plan Approval; AL, FL, GA, KY, MS, NC, SC, TN;
Interstate Transport for the 2012 PM_{2.5} NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of State Implementation Plan (SIP) submissions from Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee addressing the Clean Air Act (CAA or Act) interstate transport infrastructure SIP requirements for the 2012 Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” EPA is taking final action to approve the interstate transport portions of these infrastructure SIPs for the aforementioned states as demonstrating that air emissions in the states do not significantly contribute to nonattainment or interfere with maintenance of the 2012 PM_{2.5} NAAQS in any other state.

DATES: This rule will be effective **[Insert 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for these actions under Docket Identification No. EPA-R04-OAR-2016-0334. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Wong can be reached by telephone at (404) 562-8726 or via electronic mail at wong.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2012, EPA revised the primary Annual PM_{2.5} NAAQS to 12.0

micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). *See* 78 FR 3086 (January 15, 2013). An area meets the standard if the three-year average of its annual average $\text{PM}_{2.5}$ concentration (at each monitoring site in the area) is less than or equal to $12.0 \mu\text{g}/\text{m}^3$. States were required to submit infrastructure SIP submissions for the 2012 Annual $\text{PM}_{2.5}$ NAAQS to EPA no later than December 14, 2015.

CAA section 110(a)(1) requires states to submit SIP revisions within three years after promulgation of a new or revised NAAQS in order to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. CAA section 110(a)(2) outlines the applicable requirements of such SIP submissions, which EPA has historically referred to as “infrastructure SIP” submissions. Section 110(a)(2) requires states to address basic SIP elements such as monitoring, basic program requirements (e.g., permitting), and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. Thus, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs, and section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two subsections: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), require plans to prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state

(prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.¹

In a notice of proposed rulemaking (NPRM) published on August 9, 2018 (83 FR 39387), EPA proposed to approve the prong 1 and prong 2 portions of infrastructure SIP submissions transmitted under cover letter by: Alabama (dated December 9, 2015); Florida (dated December 14, 2015); Georgia (dated December 14, 2015); Kentucky (dated February 8, 2016); Mississippi (dated December 8, 2015); North Carolina (dated December 4, 2015); South Carolina (dated December 14, 2015); and Tennessee (dated December 16, 2015), as demonstrating that these states do not significantly contribute to nonattainment or interfere with maintenance of the 2012 Annual PM_{2.5} NAAQS in any other state.² All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. The specific details of the SIP submissions and the rationale for EPA's actions on prongs 1 and 2 are discussed in the NPRM. Comments on the proposed rulemaking were due on or before August 30, 2018. EPA received three comments that are not relevant to the proposed actions and one

¹ EPA highlighted the statutory requirement to submit infrastructure SIPs within three years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards." EPA has issued additional guidance documents and memoranda, including a September 13, 2013, guidance document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."

² EPA notes that the Agency may not have received the submissions until after the date of the cover letter.

comment in support of the proposed actions. These comments can be found in the docket for these actions.

II. Final Action

EPA is taking final action to approve the portions of the infrastructure SIP submissions transmitted under cover letter by: Alabama (dated December 9, 2015); Florida (dated December 14, 2015); Georgia (dated December 14, 2015); Kentucky (dated February 8, 2016); Mississippi (dated December 8, 2015); North Carolina (dated December 4, 2015); South Carolina (dated December 14, 2015); and Tennessee (dated December 16, 2015) addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) for the 2012 Annual PM_{2.5} NAAQS. EPA is taking final action to approve section 110(a)(2)(D)(i)(I) for the aforementioned infrastructure SIP submissions for the 2012 Annual PM_{2.5} NAAQS because the submissions are consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs subject to these actions, with the exception of the South Carolina SIP, are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. With respect to the South Carolina SIP, EPA notes that the Catawba Indian Nation Reservation is located within South Carolina, and pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” Thus, the South Carolina SIP applies to the Catawba Reservation; however, because the action related to South Carolina is not approving any specific rule into the South Carolina SIP, but rather finding that the State’s already approved SIP meets certain CAA requirements, EPA has determined that there are no substantial direct effects on the Catawba Indian Nation. EPA has also determined that the action related to South Carolina’s SIP will not impose any substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Volatile organic compounds.

Dated: September 13, 2018.

Onis “Trey” Glenn, III,

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart B – Alabama

2. Section 52.50(e) is amended by adding the entry “110(a)(1) and (2) Infrastructure

Requirements for the 2012 Annual PM_{2.5} NAAQS” at the end of the table to read as follows:

§52.50 Identification of plan.

* * * * *

(e) * * *

EPA Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Alabama	12/9/2015	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.

Subpart K – Florida

3. Section 52.520(e) is amended by adding the entry “110(a)(1) and (2) Infrastructure

Requirements for the 2012 Annual PM_{2.5} NAAQS” at the end of the table to read as follows:

§52.520 Identification of plan.

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(e) * * *

EPA-Approved Florida Non-Regulatory Provisions

Provision	State effective date	EPA approval date	FEDERAL REGISTER notice	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	10/15/2015	[Insert date of publication in Federal Register]	[Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) (I) only.

Subpart L – Georgia

4. Section 52.570(e) is amended by adding the entry “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM_{2.5} NAAQS” at the end of the table to read as follows:

§52.570 Identification of plan.

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(e) * * *

EPA-Approved Georgia Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*

110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Georgia	12/14/2015	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) (I) only.
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Subpart S – Kentucky

5. Section 52.920(e) is amended by adding the entry “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM_{2.5} NAAQS” at the end of the table to read as follows:

§52.920 Identification of plan.

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(e) * * *

EPA—Approved Kentucky Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Kentucky	2/8/2016	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) (I) only.

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Subpart Z – Mississippi

6. Section 52.1270(e) is amended by adding the entry “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM_{2.5} NAAQS” at the end of the table to read as follows:

§52.1270 Identification of plan.

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(e) * * *

EPA Approved Mississippi Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Mississippi	12/8/2015	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) (I) only.

Subpart II – North Carolina

7. Section 52.1770(e) is amended by adding the entry “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM_{2.5} NAAQS” at the end of the table to read as follows:

§52.1770 Identification of plan.

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(e) * * *

EPA-Approved North Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	FEDERAL REGISTER citation	Explanation
**	**	*	*	*

110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	12/4/2015	[Insert date of publication in Federal Register]	[Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) (I) only.
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Subpart PP – South Carolina

8. Section 52.2120(e) is amended by adding the entry “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM_{2.5} NAAQS” at the end of the table to read as follows:

§52.2120 Identification of plan.

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(e) * * *

Provision	State effective date	EPA approval date	Explanation
**	**	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	12/14/2015	[Insert date of publication in Federal Register], [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) (I) only.

Subpart RR – Tennessee

9. Section 52.2220(e) is amended by adding the entry “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM_{2.5} NAAQS” at the end of the table to read as follows:

§52.2220 Identification of plan.

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(e) * * *

EPA-Approved Tennessee Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Tennessee	11/19/2015	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) (I) only.

[FR Doc. 2018-20728 Filed: 9/24/2018 8:45 am; Publication Date: 9/25/2018]